

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Tateville Post Office  
Tateville, Kentucky

Docket No. A2011-14

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE

July 12, 2011

I. INTRODUCTION AND BACKGROUND

On May 4, 2011, the Commission docketed three petitions for review of the closing of the Tateville, Kentucky Post Office (Tateville Post Office).<sup>1</sup> Two additional petitions for review were docketed on May 9, 2011.<sup>2</sup> On May 9, 2011, the Commission issued an order instituting the current review proceedings, appointing a Public Representative, and establishing a procedural schedule.<sup>3</sup> Thereafter, on May 18, 2011, the Postal Service filed an electronic version of the administrative record concerning its Final Determination to Close the Tateville, KY Post Office and Continue to Provide Service by Highway Contract Route Service, Postal Service Docket Number 1384311-42558.<sup>4</sup>

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<sup>1</sup> The three petitions were filed by Rebecca Kroell, Glenn D. Walker, and Nancy R. Walker.

<sup>2</sup> These additional petitions were filed by Bobby A. Davis and Renee Walker.

<sup>3</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule, May 9, 2011 (Order No. 725). While Order No. 725 identified only three of the five petitioners by name, it appears that all five petitions were submitted in a timely fashion and that all five individuals are properly considered petitioners in this proceeding.

<sup>4</sup> United States Postal Service Notice of Filing, May 18, 2011.

Each of the five petitioners has filed a Participant Statement in lieu of a formal legal brief in which they each set forth their objections to the closure of the Tateville Post Office.<sup>5</sup> The Postal Service filed comments supporting its closure determination on June 27, 2011 in lieu of a legal brief.<sup>6</sup>

## II. STATEMENT OF FACTS

The Tateville Post Office is described by the Postal Service in its Final Determination as an EAS-11 level post office located in Tateville, Kentucky. AR Item No. 44 at 2. Before being closed, the Tateville Post Office provided service to 138 post office box customers and to retail customers who engaged in an average of 16 window transactions daily. *Id.* at 7.

On November 1, 2010, the Manager of Post Office Operations in London, Kentucky requested permission to investigate the possible closure of the Tateville Post Office. AR Item No. 1. The request was granted. *Id.*

On November 24, 2010, the Postal Service notified customers of the Tateville Post Office of a "possible change in the way your postal service is provided." AR Item No. 5. As described in the notice, customers were given the option of receiving carrier delivery service at a roadside mailbox at their residence or post office box delivery at the Burnside Post Office located 1.8 miles away. *Id.* Included was a questionnaire to be completed and returned by January 1, 2011. *Id.* In addition, customers were invited to attend a public meeting on December 14, 2010, at which Postal Service representatives would be available to answer questions and provide information about postal services.

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<sup>5</sup> Participant Statement of Renee Walker, June 9, 2011 (R. Walker Statement); Participant Statement of Glenn D. Walker, June 14, 2011 (G. Walker Statement); Participant Statement of Nancy R. Walker, June 14, 2011 (N. Walker Statement); Participant Statement of Rebecca Kroell, June 14, 2011 (Kroell Statement); and Participant Statement of Bobby A. Davis, June 14, 2011 (Davis Statement).

<sup>6</sup> United States Postal Service Comments Regarding Appeal, June 27, 2011 (Postal Service Comments).

Of the 150 questionnaires distributed by the Postal Service, 22 were completed and returned; 2 responded favorably to the proposal; 12 expressed opposition or concern; and 8 expressed no opinion. AR Item 24 at 1. The meeting was held on December 14, 2010, as scheduled with 34 customers in attendance. AR Item No. 24 at 1-2.

On December 20, 2010, a recommendation was forwarded by the Kentuckiana District Post Office Review Coordinator to the Manager of Post Office Operations in London, Kentucky recommending "that we proceed with the discontinuance study and post a proposal to officially close the Tateville KY Post Office." AR Item No. 28. On January 18, 2011, a formal proposal to close the Tateville Post Office was forwarded to that post office for posting for a period of 60 days. AR Item No. 36. An invitation to file comments was also posted in the Tateville Post Office. *Id.* No comments were received during the posting period that ended March 21, 2011. AR Item No. 38. That proposal was transmitted to the Vice President for Delivery and Post Office Operations on March 25, 2011. AR Item No. 42.

On March 27, 2011, the Final Determination to close the Tateville Post Office was approved. AR Item No. 44. The decision was based upon (1) the fact the postmaster had retired on July 7, 2007, and was replaced by a non-career postmaster; (2) the post office workload had declined; (3) the availability of postal services at the Burnside Post Office approximately 2 miles away; and (4) estimated annual savings to the Postal Service of approximately \$46,280, including approximately \$43,300 which represented the salary and fringe benefits of the non-career postmaster who, the Postal Service states, is subject to termination. *Id.* at 7. The Final Determination also considered and responded to various concerns expressed by postal customers at the December 14, 2010 public meeting. *Id.* at 2-6.

### III. POSITIONS OF THE PARTIES

#### A. The Petitioners

In their Participant Statements, Petitioners present a number of arguments in opposition to the closing of the Tateville Post Office: (1) convenience; (2) easier access for the elderly; (3) faster and more reliable service than service from the Burnside Post Office; and (4) concern over the loss of postal jobs.<sup>7</sup> On May 5, 2011, a group of customers filed a petition previously submitted to the Postal Service urging rejection of the Postal Service's proposal to close the Tateville Post Office.<sup>8</sup> The petition objected to the post office closing on several grounds, including unnecessary hardships, expense, inconvenience associated with the installation of roadside mailboxes, possible theft of mail, and discrimination favoring certain members of the community who would be eligible for delivery to their home. *Id.*

#### B. The Postal Service

On June 27, 2011, the Postal Service filed comments in lieu of the answering brief permitted by Order No. 725. Postal Service Comments. In that filing, the Postal Service argues that: (1) it has met all procedural requirements; and (2) it has considered all pertinent criteria, including the effect of the closing on postal services, the community, employees, the economic savings from the discontinuance of the Tateville Post Office, and concerns expressed by customers during the discontinuance process. *Id.* at 3-12.

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<sup>7</sup> Davis Statement; Kroell Statement; N. Walker Statement; G. Walker Statement; and R. Walker Statement.

<sup>8</sup> Petition of the Citizens of Tateville, KY, December 15, 2010.

#### IV. STANDARD OF REVIEW AND APPLICABLE LAW

##### A. Standard of Review

The Commission's authority to review post office closings provided by 39 U.S.C. § 404(d)(5). That section requires that the Postal Service's determination be reviewed on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds are: (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.<sup>9</sup>

##### B. The Law Governing Postal Service Determinations

Prior to making a final determination to close or consolidate a post office, the Postal Service is required by 39 U.S.C. § 404 to consider: (i) the effect of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;" (iv) the economic savings to the Postal Service due to the closing; and (v) such other factors as the Postal Service determines are necessary. See 39 U.S.C. § 404(d)(2)(A)

In addition, the Postal Service's Final Determination must be in writing, address the aforementioned considerations, and be made available to persons served by the

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<sup>9</sup> Section 404(d)(5) also authorizes the Commission to suspend the effectiveness of a Postal Service determination pending disposition of the appeal. None of the petitioners in this proceeding requested suspension of the closure of the Tateville Post Office.

post office. 39 U.S.C. § 404(d)(3). Finally, the Postal Service is prohibited from taking any action to close a post office until 60 days after its Final Determination is made available. 39 U.S.C. § 404(d)(4).

#### V. ADEQUACY OF THE POSTAL SERVICE'S FINAL DETERMINATION

After careful review of the Postal Service's Final Determination, the materials in the Administrative Record, the arguments presented by Petitioners and the Petition submitted by customers of the Tateville Post Office, and the Postal Service Comments, the Public Representative concludes that the Postal Service has followed applicable procedures, that the decision to close the Tateville Post Office is neither arbitrary nor capricious, and that the Postal Service's decision is supported by substantial evidence.

#### VI. CONCLUSION

For the reasons set forth above, the decision of the Postal Service to close the Tateville Post Office should be affirmed.

Respectfully Submitted,

/s/ Richard A. Oliver  
Richard A. Oliver  
Public Representative

901 New York Avenue, N.W.  
Washington, D.C. 20268-0001  
(202) 789-6878; Fax (202) 789-6891  
[richard.oliver@prc.gov](mailto:richard.oliver@prc.gov)